

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5303 OF 2004

ALONG WITH
Cri.Appln Nos.5304/04, 5307/04, 5308/04, 5309/04
ALONG WITH
Cri.Appln Nos.5318/04, 5319/04, 5320/04, 5322/04
5323/04, 5324/04, 5325/04
ALONG WITH
Cri.Appln Nos.5268/04, 5269/04, 5270/04, 5271/04
ALONG WITH
Cri.Appln No.5298/04, 5299/04, 5300/04, 5302/04

Mr. Vinod Kumar Pittie & Anr. ...Applicants.

V/s

The State of Maharashtra
and Ors.

...Respondents.

Mr. A.M. Saraogi with Ms. Pallavi Ashar for the
applicants in all the above applications.

Mr. Prakash Naik with Mr. U.B. Nighot for
respondent No.2 in all the above applications.

Mr. A.M. Shringarpure, APP for the State appears in
Cri.Appln Nos. 5303/04, 5304/04, 5307/04, 5308/04,
5309/04.

Mr. D.P. Adsule, APP for the State appears in Cri.
Appln Nos. 5318/04, 5319/04, 5320/04, 5322/04.

Mr. B.R. Patil, APP for the State in Cri. Appln
Nos.5323/04, 5324/04, 5325/04.

Mr. A.S. Shitole, APP for the State appears in Cri.
Appln Nos. 5268/04, 5269/04, 5270/04, 5271/04.

Mr. S.R. Shinde, APP for the State appears in Cri.
Appln Nos. 5298/04, 5299/04, 5300/04, 5302/04.

CORAM: V.M.KANADE,J.

DATE: 28th April, 2005

P.C.:

1. Heard the learned Counsel for the applicants and the learned counsel for the respondent No.2.

2. Applicants are challenging the order of issuance of process passed by the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai on a complaint filed by respondent No.2 under section 138 of the Negotiable Instruments Act.

3. It is submitted by the learned counsel appearing for the applicants that the applicants have resigned as Directors in the year 1998 and intimation of this fact was given to the Registrar of Companies in 1999. It is submitted that, therefore, they cannot be prosecuted under the provisions of section 138 of the Negotiable Instruments Act. The learned Counsel appearing for respondent No.2 vehemently disputes this fact.

4. Respondent No.2 has filed affidavit in reply in which it is stated that Form 32 was filed in 1999 after the cheques were dishonoured. He submits that the fact of resignation of the applicants is seriously disputed.

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5. Since there is a dispute regarding the fact of resignation, in my view, this question will have to be decided by the Trial Court after the evidence is adduced by the parties. All questions raised in these applications are kept open and the trial court shall decide these questions after the evidence is adduced by both the parties on merits and in accordance with law.

6. It is submitted that number of complaints have been filed where facts are almost identical and they are pending in various courts. Since the parties are same in all these complaints filed by the complainant against the applicants and others, Chief Metropolitan Magistrate is directed to assign all these matters to one particular Magistrate who shall hear all these cases filed by the respondent No.2 against the applicants and others on merits and in accordance with law.

7. With the above directions, all these Criminal Applications are dismissed. Interim stay stands vacated.

V.M.KANADE, J.